

Service Date: October 6, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of)	UTILITY DIVISION
Billings Generation, Inc. to)	
Determine Conditions Under a Power)	DOCKET NO. 92.8.39
Purchase Agreement with Montana)	
Power Company.)	ORDER NO. 5648b

ORDER ON MOTIONS IN LIMINE

BACKGROUND

On September 17, 1992 Billings Generation, Inc. (BGI) filed "Motions in Limine" in this Docket. BGI seeks an order that the evidentiary hearing be vacated, that no discovery need be conducted in this proceeding, that parties be given to October 2, 1992 to file response briefs and that oral arguments be set for October 13, 1992, the date currently set for the evidentiary hearing. BGI argues that an evidentiary hearing is not necessary because both parties agree that the Agreement can be interpreted by referring only to the language of the Agreement. In the alternative, BGI seeks an order limiting testimony to matters relevant to interpretation of the Agreement. MPC filed no response to the BGI motions.

DECISION

BGI's motion to vacate the evidentiary hearing is denied. BGI's motion to limit testimony to matters relevant to contract interpretation is granted with respect to both MPC and BGI. This proceeding is about contract interpretation. The basic disagreement has been joined at paragraphs 18 of the petition and the answer, and has been discussed in the prehearing briefs. Both parties should be prepared to justify the introduction of extrinsic evidence by explaining where the Agreement is ambiguous and why extrinsic evidence is necessary to clarify such ambiguity. Some latitude will be given parties wishing to present extrinsic evidence, but parties should be on notice that evidence clearly irrelevant to the purpose of this proceeding will not be admitted. At the request of the parties a prehearing conference to consider evidentiary matters may be held no later than October 9, 1992.

If MPC and BGI agree that the intent of the parties can be ascertained by reference to the Agreement alone, then October 13, 1992 will be for oral argument and submission of answer briefs.

ORDER

BGI's motions in limine are granted and denied as described above.

BY ORDER OF THE HEARING EXAMINER

ROBIN A. MCHUGH

10/2/92_____
Date